

## RHS, RBS, RUS, FSA, USDA

## § 1980.497

for Rural Business Enterprises Guaranteed Loans” are referred to as “Appendix K.”

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

### § 1980.496 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

### § 1980.497 General administrative.

Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the OGC on liquidations and property management.

(a) *Office of the General Counsel (OGC).* In performing the FmHA or its successor agency under Public Law 103-354 functions with respect to B&I, D & D, and DARBE loans, the advice and assistance of OGC may be sought and followed on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA or its successor agency under Public Law 103-354 has any questions concerning the lender's resolution of these matters, OGC should be consulted. Assistance of OGC will be requested on all loans as specified herein and all liquidations and workouts.

(b) *Contact with OGC.* Initial informal contact with OGC should be made as soon as possible. FmHA or its successor agency under Public Law 103-354 State Directors should use the following for-

mat in formally requesting legal assistance on workouts.

(1) *Origination:* All written requests should come from the State Director.

(2) *Method:* Request should be made by referral memorandum to the Regional Attorney setting forth a brief statement of the facts, the reason assistance is requested, the extent of legal assistance sought, the date when FmHA or its successor agency under Public Law 103-354's response to the lender's liquidation plan (if any) is due and:

(i) *Projected losses on collateral:* e.g., projected losses on collateral are expected to be significant.

(ii) *Unusual or complex nature of primary collateral:* e.g., multi-state foreclosures or foreclosure of leases or general intangibles.

(iii) *Presence of other major creditors or of senior creditors:* e.g., guaranteed loan collateral may be subject to a prior lien or other creditors may have rights in other assets of borrower, such as inventory and accounts receivable.

(iv) *Litigation is pending or threatened:* e.g., bankruptcy, other foreclosure suits.

(3) *Materials to submit:* Referral memorandums will be accompanied by a copy of lender's liquidation plan together with a copy of FmHA or its successor agency under Public Law 103-354's planned response and principal loan papers, conditional commitment for guarantee, guarantee documents and any comments from the National Office. If lender refuses to prepare a plan, the State Director should so state. DO NOT SEND DOCKETS unless specifically requested by OGC.

(c) *Reviews prior to issuance of the loan note guarantee.* After the conditional commitment for guarantee has been issued and proposed with closing documents prepared by the lender and forwarded to FmHA or its successor agency under Public Law 103-354 with the lender's legal counsel's opinion in the suggested format of appendix H of this subpart, but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an